

ENTERED

April 30, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AUDIO FIDELITY	§	CIVIL ACTION NO.
COMMUNICATIONS	§	4:19-cv-01371
CORPORATION d/b/a	§	
WHITLOCK	§	
Plaintiff,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
MARC POWER, <i>et al.</i> ,	§	
Defendants.	§	

MEMORANDUM AND ORDER

Before the Court is a motion to dismiss by Defendants pursuant to 12(b)(6) of the Federal Rule of Civil Procedure. Dkt 22.

Plaintiff Audio Fidelity Communications Corporation d/b/a Whitlock filed its amended complaint on May 28, 2019. Dkt 11. Defendants filed their motion to dismiss over two months later on July 23, 2019.

Rule 15(a)(3) required Defendants to serve their motion by June 11, 2019. It provides that a defendant must respond to a plaintiff's amended complaint "within 14 days after service of the amended pleading." A defendant's "right to interpose a Rule 12(b) motion is extended or revived accordingly." Charles Wright and Arthur Miller, *Federal Practice and Procedure* § 1361 (3d ed 2020).

Rule 6(b)(1)(B) allows the Court to extend deadlines for "good cause" on motion establishing "excusable neglect." See also Charles Wright and Arthur Miller, *Federal Practice and Procedure* § 1165 (4th ed 2020). Defendants make no such showing. They

neither sought leave to file a late motion nor replied to explain the delay.

The Court STRIKES the motion to dismiss. Dkt 22. Defendants must file their answer within fourteen days of this Order.

To be clear, the Court has not ruled on the legal merits of the Defendants' motion. They may raise those grounds by motion for judgment on the pleadings or for summary judgment when appropriate and desired if in accord with the Federal Rules of Civil Procedure.

SO ORDERED.

Signed on April 30, 2020, at Houston, Texas.



Hon. Charles Eskridge
United States District Judge